



April 12, 2002

Dr. Gregory Powell  
President  
Panola College  
1109 West Panola  
Carthage, Texas 75633

OR2002-1827

Dear Dr. Powell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161364.

Panola College (the "college") received a request for copies of the following information regarding the hiring of a person for the position of Instructor of English:

1. the name of the person who was hired.
2. the official list of applicants.
3. the first page of the undergraduate transcript sent by each applicant.
4. the roster of Selection Committee members including titles and departments.
5. any guidelines or directives that the college uses to guide or direct the operations of faculty selection committees.
6. the official minutes of the Selection Committee meetings.
7. any notes sent from the Selection Committee members to each other.
8. a sample of the evaluation form(s) used by the Selection Committee members to rate and rank order applicants.
9. instructions for using the evaluation form(s).

10. all explanations of evaluation criteria whether separate, or part of the evaluation form(s), or part of the form(s) instructions.
11. a list of all finalists for the position.
12. a list of all finalists who were interviewed.
13. for each finalist:
  - a) his or her letter of application.
  - b) resume.
  - c) letters of reference.
  - d) all completed or partially completed evaluation forms from committee members pertaining to each finalist
  - e) any notes pertaining to the finalist.
14. for the group of finalists:
  - a) the preliminary rank ordering, if any, including the worksheet onto which the scores from individual evaluation forms were transferred and any instructions for this sheet.
  - b) the final rank ordering prior to interviews.
15. from the requestor's application file:
  - a) resume
  - b) all completed or partially completed evaluation forms from committee members pertaining to the requestor.
  - c) the worksheet onto which the scores from individual evaluation forms were transferred and any instructions for this sheet.
  - d) any notes pertaining to the requestor's application

You state that you are providing the requestor with the information that is responsive to request items 1, 2, 4, 5, 8, 9, 11, 12, 13d), and 15a). You state that the college does not possess any information responsive to request items 6, 7, 10, 13e), 14a), 14b), 15b), 15c),

and 15d).<sup>1</sup> You claim, however, that the remaining requested information which is responsive to request items 3, 13a), 13b), and 13c) is excepted from disclosure pursuant to sections 552.026, 552.101, 552.102, 552.114, 552.117, 552.136, and 552.137 of the Government Code, as well as pursuant to the Family Educational Rights and Privacy Act of 1974 ("FERPA"). We have considered the exceptions you claim and have reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

You claim that the information, or portions thereof, is excepted from disclosure pursuant to sections 552.026 and 552.114 of the Government Code in conjunction with FERPA. We note that FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). The term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution. *See id.* § 1323g(a)(6). Based on our review of your arguments and the information at issue, most of the applicants did not attend the college as "students." Furthermore, although some of the applicants did attend the college as "students," the college is not maintaining the submitted transcripts as student records. Accordingly, we conclude that no portion of the information is excepted from disclosure pursuant to sections 552.026 and 552.114 of the Government Code in conjunction with FERPA. *See id.* § 1232g(b)(4)(B).

You also claim that the information, or portions thereof, is excepted from disclosure pursuant to section 552.117 of the Government Code. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(1). However, information subject to section 552.117(1) may not be withheld from disclosure if the current or former employee made the request for confidentiality under section 552.024 after the request for information at issue was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Accordingly, we conclude that the college must withhold from disclosure the

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<sup>1</sup> It is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 87 (1975), 342 at 3 (1982), 416 at 5 (1984), 452 at 2-3 (1986), 555 at 1-2 (1990), 572 at 1 (1990). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

information that we have marked pursuant to section 552.117(1), if the chosen applicant requested that this information be kept confidential under section 552.024 prior to the college's receipt of the request for information. If the chosen applicant did not request that this information be kept confidential pursuant to section 552.024 prior to the college's receipt of the request, we conclude that the college must release this information to the requestor.

Nevertheless, the chosen applicant's social security number, as well as the social security numbers of the applicants not chosen for the position, may be confidential under federal law. Social security numbers may be excepted from disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I).<sup>2</sup> See Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. See *id.* The college has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain these social security numbers. Therefore, we have no basis for concluding that these numbers are confidential pursuant to section 405(c)(2)(C)(viii)(I) of Title 42 of the United States Code. We caution the college, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers at issue, the college should ensure that these social security numbers were not obtained or are not maintained by the college pursuant to any provision of law enacted on or after October 1, 1990.

You also claim that portions of the information are excepted from disclosure pursuant to section 552.102 of the Government Code. Section 552.102(b) states:

a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, except that this section does not exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee.

Gov't Code § 552.102(b). We note that this office has interpreted "professional public school employee," to refer to employees of public schools providing "public education" under Title 2 of the Education Code, not colleges and universities providing "higher education" under Title 3 of the Education Code. Accordingly, we conclude that the college may not withhold from disclosure any portion of the transcript of the applicant chosen for this position under section 552.102(b) of the Government Code.

You also claim that portions of the information contain e-mail addresses that may be subject to section 552.137 of the Government Code. Section 552.137 makes certain e-mail addresses confidential and provides in pertinent part:

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<sup>2</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code § 552.137. Accordingly, unless the members of the public in question have affirmatively consented to their release, you must withhold the e-mail addresses that we have marked from disclosure pursuant to section 552.137 of the Government Code.

In summary, the college must withhold from disclosure the information that we have marked pursuant to section 552.117(1), if the applicant chosen for the position requested that this information be kept confidential under section 552.024 prior to the college's receipt of the request for information. If the chosen applicant did not request that this information be kept confidential pursuant to section 552.024 prior to the college's receipt of the request, we conclude that the college must release this information to the requestor. Nevertheless, the chosen applicant's social security number, as well as the social security numbers of the applicants not chosen for the position may be confidential under federal law. Unless the members of the public in question have affirmatively consented to their release, the college must withhold the e-mail addresses that we have marked from disclosure pursuant to section 552.137 of the Government Code. The college must release all other submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 161364

Enc. Marked documents

cc: Mr. Raymond C. Harlan  
17544 East Wesley Place  
Aurora, Colorado 80013-4174  
(w/o enclosures)